

1 KEKER & VAN NEST LLP
2 ROBERT A. VAN NEST - # 84065
3 BRIAN L. FERRALL - # 160847
4 DAVID SILBERT - # 173128
5 MICHAEL S. KWUN - #198945
6 633 Battery Street
7 San Francisco, CA 94111-1809
8 Telephone: (415) 391-5400
9 Email: rvannest@kvn.com;
10 bferrall@kvn.com; dsilbert@kvn.com;
11 mkwun@kvn.com

SUSAN CREIGHTON, SBN 135528
SCOTT A. SHER, SBN 190053
WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
1700 K Street NW, Fifth Floor
Washington, D.C., 20006-3817
Telephone: (202) 973-8800
Email: screighton@wsgr.com;
ssher@wsgr.com

12 JONATHAN M. JACOBSON, NY SBN 1350495
13 CHUL PAK (*pro hac vice*)
14 DAVID H. REICHENBERG (*pro hac vice*)
15 WILSON SONSINI GOODRICH & ROSATI
Professional Corporation
16 1301 Avenue Of The Americas, 40th Floor
New York, NY 10019-6022
17 Telephone: (212) 999-5800
18 Email: jjacobson@wsgr.com; cpak@wsgr.com;
dreichenberg@wsgr.com

19 Attorneys for Defendant
20 ARISTA NETWORKS, INC.

21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

CISCO SYSTEMS, INC.,
Plaintiff,
v.
ARISTA NETWORKS, INC.,
Defendant.

Case No. 5:14-cv-05344-BLF (NC)

**DECLARATION OF EDUARDO E.
SANTACANA IN SUPPORT OF ARISTA'S
ADMINISTRATIVE MOTION TO
MAINTAIN UNDER SEAL/REDACT
PORTIONS OF PRETRIAL
CONFERENCE TRANSCRIPT**

Judge: Hon. Beth Labson Freeman
Date Filed: December 5, 2014
Trial Date: November 21, 2016

1 I, EDUARDO E. SANTACANA, declare and state as follows:

2 1. I am an attorney licensed to practice law in the State of California and admitted to
 3 practice before this Court. I am an associate at the law firm of Keker & Van Nest LLP and
 4 counsel for Defendant Arista Networks, Inc. in the above-captioned action. I have personal
 5 knowledge of the facts stated herein and, if called as a witness, I could testify competently
 6 thereto.

7 2. On November 16, 2016, I filed a declaration in support of an administrative
 8 motion to seal/redact portions of the Pretrial Conference Transcript. ECF 662-1. This Court
 9 granted the sealing request on November 29, 2016. ECF 688. In my declaration in support of the
 10 sealing request, I inadvertently misstated the procedural posture of Cisco and Arista's cross-
 11 appeals of an ITC Opinion now pending before the Federal Circuit Court of Appeals. I file this
 12 declaration to correct my misstatement and to request that the Court confirm its Order sealing the
 13 subject portions of the Pretrial Conference Transcript, notwithstanding my error.

14 3. On November 16, 2016, Arista filed an administrative motion to seal/redact
 15 portions of the Pretrial Conference Transcript that disclosed confidential portions of the
 16 International Trade Commission's Final Commission Opinion in Investigation No. 337-TA-944,
 17 *In the Matter of Certain Network Devices, Related Software and Components Thereof (I)*. ECF
 18 662. Arista's motion and my accompanying declaration explained certain information has been
 19 redacted from the Commission Public Opinion, and that such information should remain
 20 confidential. A Public Version of the Opinion was attached to my declaration in support of the
 21 administrative motion. ECF 662-3.

22 4. Cisco and Arista both appealed the ITC Opinion to the Federal Circuit in August
 23 2016, and the two appeals were consolidated under lead case number 16-2563. On November 2,
 24 2016, Cisco filed a "Motion to Mark More than 15 Words Confidential and Make Certain
 25 Information Public" seeking an order from the Federal Circuit making certain pages of the ITC
 26 Opinion "part of the public record in [the] appeal." Case No. 16-2563, Doc. 24-1 (Fed. Cir.). On
 27 November 10, 2016, the ITC filed a response to Cisco's motion, in which it objected to Cisco's
 28 request on the grounds that any declassification decision should be made by the Commission, not

1 the Federal Circuit. It was in that response that the Commission noted the matter was “of great
 2 institutional concern” to the ITC. Case No. 16-2563, Doc. 26 (Fed. Cir.). The Commission asked
 3 that the Federal Circuit remand the matter to the Commission. *Id.* at 1.

4 5. In its reply brief in support of its motion asking the Federal Circuit to unseal
 5 portions of the ITC Opinion, Cisco referred to the Pretrial Conference held on November 3, 2016,
 6 in this case. Cisco argued that Arista could not maintain the confidentiality of the ITC Opinion
 7 because “[a] district court judge presiding over related litigation recently discussed” the ITC
 8 Opinion “in open court,” thereby waiving any interest Arista has in the confidentiality of the
 9 subject portions of the ITC Opinion. Case No. 16-2563, Doc. 30-1 (Fed. Cir.).

10 6. In paragraph 6 of my November 16, 2016 declaration, I misstated that the Federal
 11 Circuit “remanded to the Commission a request by Cisco to unseal portions of the [ITC]
 12 Opinion.” The administrative motion made the same statement on page 1 line 28 through page 2
 13 line 3. The Federal Circuit has, in fact, not ruled on Cisco’s request to unseal portions of the ITC
 14 Opinion, nor has it remanded the matter to the Commission. The document I quoted from and
 15 attached to my declaration was, in fact, the ITC’s Response to Cisco’s Motion. ECF 662-4.

16 7. My misstatement was unintentional. In the haste of pretrial preparation, I mistook
 17 the brief the Commission filed objecting to Cisco’s request to declassify portions of the
 18 Commission’s Order as an order of the Federal Circuit. I did not intend to misrepresent the
 19 procedural posture of Cisco’s still-pending motion before the Federal Circuit.

20 8. I first became aware of my error yesterday, when I learned from Arista’s ITC
 21 counsel that Cisco filed a Federal Rule of Appellate Procedure 28(j) letter before the Federal
 22 Circuit stating that Arista made misrepresentations to this Court to secure a sealing order. Case
 23 No. 16-2563, Doc. 35-1 (Fed. Cir.). Cisco did not contact either Arista’s counsel in this case or
 24 Arista’s counsel in the Federal Circuit to bring this inadvertent error to Arista’s attention before
 25 filing its letter.

26 9. Arista requests that this Court maintain under seal the portions of the pretrial
 27 conference transcript this Court ordered sealed on November 29, 2016. Good cause continues to
 28 support sealing those portions because they discuss confidential portions of the ITC’s Final

Commission Opinion in Investigation No. 337-TA-944, *In the Matter of Certain Network Devices, Related Software and Components Thereof (I)* that are under seal.

10. The Commission opposes Cisco’s request at the Federal Circuit to unseal those portions of the Opinion. The ITC’s response brief requests instead that the Federal Circuit remand the question to the Commission in the first instance. The motion is currently pending before the Federal Circuit.

11. Arista does not seek to seal any other portions of the pretrial conference transcript.

Executed on December 13, 2016, at San Francisco, California.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



EDUARDO E. SANTACANA